

REMARKS

1. Claims 45-48 and 50 have been indicated as allowable if rewritten in independent form including all the limitations of the base claims and any intervening claims. By the above amendments, Claim 1 has been amended to include the limitations of Claim 45 and intermediate Claims 44 and 15, except that the term “flex” as applied to the “circuit” has been deleted and the battery has been limited to a “permanently affixed” battery. Accordingly, pending independent Claim 1, and dependent Claims 46 - 48 should now be allowable. Additionally, dependent Claims 2-12, as amended, are now dependent upon Claim 1 and should, therefore, also be found allowable for the same reasons.

2. Remaining Claims 26-33 and 36-44 stand rejected as anticipated under 35 U.S.C. § 102(e) by Brimhall ‘720. However, Claim 26 has been amended to recite that a receiver is “contained within a receptacle formed in the body portion” of a third compliant section of a hearing aid and wherein the third section is formed of at least three portions “a tip portion” (44), a “body portion” (38) and a “sound port portion” (40). To the contrary, Brimhall’s receiver 150 is suspended in a shell 20 (col. 13, line 21 and col. 7, lines 10-15) of a receiver mount which is non-compliant and rigid and, therefore, has to be “engaged within a separate conformal tip” 200 (col. 13, lines 57-58). Note that unlike the present claims, the sound port 162 in Brimhall is mounted on microphone 160 within the shell 20 and is not part of the tip. See col. 13, lines 1-17. Therefore, all the limitations of independent Claim 26 and 54 and dependent Claims 27-43 are not found in Brimhall. Reconsideration of the rejection based on such claims is respectfully requested.

3. Claims 54-58 stand rejected as anticipated by Oliveira ‘151. Claim 57 has been canceled and independent Claim 54 amended to more clearly distinguish over the ‘151 patent by adding the limitation that the third material has a receptacle for containing a hearing aid receiver. The limitation is not found or suggested by the ‘151 patent. Therefore, reconsideration is respectfully requested.

4. Likewise, for the reasons given in Part 3 above, reconsideration of the rejection based on Brown ‘174 is requested.

5. Dependent Claims 9-10 and 34-35 stand rejected as obvious in view of Brimhall, et al., the '720 patent. However, each of the referenced claims is variously dependent upon base Claims 1 or 26 which for the reasons given above in parts 1 or 2 avoid the limitations of Brimhall and, therefore, the dependent claims cannot be found obvious in view thereof.


CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By



Leo R. Reynolds

Registration No. 20,884

Telephone: (978) 341-0036

Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated:

11/3/03